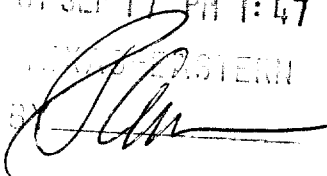


IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

FILED
U.S. DISTRICT COURT
01 SEP 17 PM 1:47
MARSHALL, TEXAS


CASEY L. TROUILLE, A/N/F OF
ZACHARY ELROD, A MINOR,

Plaintiff

V.

RAILSERVE, INC.,

Defendant.

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CAUSE NO. 2-01CV178-TJW
(JURY TRIAL DEMANDED)

ORIGINAL ANSWER OF DEFENDANT RAILSERVE, INC.

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendant Railserve, Inc. ("Defendant") files this Original Answer to Plaintiffs' Original Complaint ("the Complaint"), and in support thereof would show unto this Court as follows:

1.

Defendant admits that Plaintiffs are citizens of the State of Texas. Defendant is without sufficient knowledge to form a belief as to the truth of the status of Plaintiff Zachary Elrod as the adopted or biological son of Carey Elrod. Defendant denies that it has any liability to Plaintiff.

2.

Defendant admits the averments contained in Paragraph 2 of the Complaint.

3.

Defendant admits there is complete diversity of citizenship between the parties, but denies that the amount in controversy exceeds \$75,000.00.

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4.

Defendant is without sufficient knowledge to form a belief as to the truth of the matters alleged in Paragraph 4 of the Complaint.

5.

Defendant admits the averments contained in Paragraph 5 of the Complaint.

6.

Defendant admits the averments contained in Paragraph 6 of the Complaint.

7.

Defendant denies the averments contained in Paragraph 7 of the Complaint.

8.

Defendant denies the averments contained in Paragraph 8 of the Complaint.

9.

Defendant denies the averments contained in Paragraph of 9 of the Complaint. Plaintiff is limited to punitive damages in this case, and Plaintiff may not recover interest on those damages pursuant to Texas Civil Practices & Remedies Code § 41.007.

AFFIRMATIVE DEFENSES

10.

Plaintiffs' damages, if any, were proximately caused in whole or in part by the acts or omissions of negligence of Casey Lee Elrod.

11.

Plaintiffs' damages, if any, are limited by § 41.008 of the Texas Civil Practices & Remedies Code.

12.

An award of punitive damages in this case would violate Defendant's right to due process of law under the fourteenth amendment.

13.

Plaintiffs may not recover actual damages from Defendant under Texas Labor Code § 408.001.

JURY DEMAND


14.

Defendant requests a trial by jury in this case.

WHEREFORE PREMISES CONSIDERED, Defendant prays that after trial, that Plaintiffs recover nothing, and that Defendant be discharged with its costs.

Respectfully submitted,

SHEEHY, SERPE & WARE, P.C.

By: 

Richard A. Sheehy

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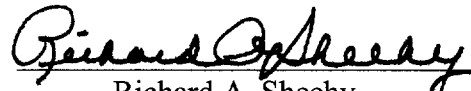
***Attorneys for Defendant
Railserve, Inc.***

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been forwarded to all known counsel of record in accordance with the Federal Rules of Civil Procedure on this the 14th day of September 2001.


Richard A. Sheehy

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